

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**WAYMON KINCAID,**

**Petitioner,**

**Case No. 04-71090**

**v.**

**District Judge Avern Cohn  
Magistrate Judge R. Steven Whalen**

**KURT JONES,**

**Respondent.**

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**ORDER HOLDING PETITION IN ABEYANCE**

Petitioner Waymon Kincaid has filed a motion to hold his petition for writ of habeas corpus, filed pursuant to 28 U.S.C. §2254, in abeyance [Docket #16]. Respondent has concurred in this motion.

The habeas petition in this case raises an issue as to whether Petitioner, who is serving a “parolable” life sentence in the State of Michigan, effectively had his punishment increased in violation of the Ex Post Facto Clause, as the result of the retroactive application of statutory and policy changes in the Michigan Parole system. Petitioner is a named plaintiff in a separate class action civil suit in the Eastern District of Michigan, *Foster-Bey, et.al. V. Rubitschun, et.al.*, No. 05-71318, assigned to Judge Marianne Battani. That case raises precisely the same issue raised in this habeas petition. There has been extensive discovery

in the *Foster-Bey* case, and cross-motions for summary judgment are pending.

Accordingly, I agree with the parties that judicial resources in this fact-intensive and statistic-intensive case would be better conserved, and the possibility of inconsistent judgments avoided, by holding this case in abeyance as requested.

IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus filed in this case be HELD IN ABEYANCE pending the resolution of Docket No. 05-71318.

S/R. Steven Whalen  
R. STEVEN WHALEN  
UNITED STATES MAGISTRATE JUDGE

Dated: March 1, 2007

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on March 1, 2007.

S/Gina Wilson  
Judicial Assistant